IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 61 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAMUBHAI DADUBHAI MEGHVAL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 61 of 2001

MR DF AMIN for Petitioner No. 1

MR BY MANKAD, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 04/07/2001

ORAL JUDGEMENT

Heard learned Counsel Shri Dinesh Amin for the appellant accused and Shri B.Y.Mankad, learned APP for the respondent State.

The appellant accused has challenged in this

appeal the judgement and order of conviction and sentence passed by the learned Additional Sessions Judge, Panchmahal at Godhra, whereby he convicted the appellant accused for the offences punishable under Section 511 and 489(C) of the IPC and sentenced to suffer RI for six months and to pay a fine of Rs. 500, in default to further undergo 15 days SI and RI for 3 years and to pay fine of Rs. 1,000/-, in default to further undergo 15 days SI for the respective offences.

The learned Counsel Shri Amin for the appellant accused initially tried to assail the order of conviction and sentence passed by the learned trial Judge on merits by submitting that the learned Judge was in error in convicting the appellant accused on the basis of his socalled confession Ex.20. However, considering the other relevant facts and circumstances of the case, he has not pressed this point and submitted that the sentence be reduced suitably.

When the appeal is not pressed on merits, then I am not required to decide as to whether the learned Judge committed any error in convicting the accused for the aforesaid offences. On the point of sentence, there seems to be lot of substance. Learned Additional Public Prosecutor Shri Mankad also left it to the Court on the point of sentence.

In the instant case, the offence was committed on 13.3.1999 and the accused was arrested on 17th March, 1999 and since then he is in jail and he was not enlarged on bail during the trial. He was sentenced on 8.1.2001. Thus, by now in all he has remained in jail for two years and more than 3 months.

Learned Counsel Shri Amin for the appellant accused submitted that at the time of commission of the offence the accused was only aged 22; that he was the only son of the old parents; that he had two elder sisters who got married and staying separately with their respective husbands; that this was his first offence and prior to that no case was registered against him of similar nature; that he was a worker and because of the circumstances he committed such offence for which he is sufficiently punished. He therefore submitted that the order of sentence as already undergone may be passed.

However, learned APP Shri Mankad for the respondent State submitted that after considering the aforesaid circumstances, the trial Court itself took a liberal view of the matter and imposed a lesser

punishment of six months for the offence punishable under Section 511 and therefore, this Court should not reduce the sentence any more.

Having regard to the peculiar facts and circumstances of the case, I am of the opinion that the sentence already undergone will serve the interest of justice.

In view of the above discussion, the impugned order of conviction passed by the trial Court convicting the accused appellant for the offence under Sections 511 and 489(C) of the IPC is hereby confirmed. However, order of substantive sentence of RI for six months for the offence under Section 511 and RI for 3 years for the offence under Section 489(C) IPC is reduced to sentence already undergone. In the facts and circumstances of the present case, order of fine of Rs. 500 and in default to undergo SI for 15 days and fine of Rs. 1000 and in default to undergo SI for 15 days, is hereby quashed and set aside.

Appeal is partly allowed on the point of sentence only. If the appellant accused is not required for any other case then he may be released from the jail forthwith.

(B.J.Shethna, J.)

*/Mohandas